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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FAIRMONT SPECIALTY GROUP,

Defendant and Appellant.

B217540

(Los Angeles County
Super. Ct. No. SJ-3356)

(Crim. No. NA-077800)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, James Pierce and Edmund W. Clarke, Judges. Reversed and remanded with directions.

Nunez and Bernstein and E. Alan Nunez for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, and Gary P. Gross, Deputy County Counsel, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

On March 26, 2008, appellant Fairmont Specialty Group (Fairmont) posted bail bond no. T50-50089551 in the amount of \$30,000 for the release of defendant Juan Guaroado Menjivar from custody.¹ On May 14, 2008, when the matter was called for arraignment, the defendant failed to appear in court. The court noted the failure to appear on the record and issued a bench warrant. However, although the docket stated that bail was forfeited, the reporter's transcript nowhere reflects that the court declared a bail forfeiture in open court.

A notice of forfeiture was mailed on May 29, 2008. The notice stated that the contractual obligation to pay the bond would become absolute on the 186th day following the date of the mailing of the notice unless the court ordered the forfeiture set aside and the bond reinstated. On December 11, 2008, the court granted an extension of the forfeiture period until June 8, 2009.

On March 16, 2009, Fairmont moved to vacate the forfeiture and exonerate the bond. On June 8, 2009, the court denied the motion. On June 11, 2009, the clerk's application for entry of judgment and summary judgment against the surety on a forfeited bond was filed. On that same day, judgment on the forfeited bond was entered. Fairmont appealed the judgment and the order denying its motion to vacate the forfeiture and exonerate the bond. Fairmont contends the trial court's failure to declare a forfeiture on the record at the May 14 hearing resulted in loss of jurisdiction and exoneration of the bond. We agree and reverse.²

¹ Menjivar's name is sometimes spelled "Mensivar."

² Respondent County of Los Angeles notified this court by letter that it would not be filing a respondent's brief and stated that the County's review of the record indicated that Fairmont's contentions on appeal "have merit."

DISCUSSION

“If a criminal defendant who is out of custody on a bail bond does not appear at a required hearing or trial, the court may order the bail bond company to forfeit the bond. ([Pen. Code,] § 1305[, subd.](a).) To effectuate this forfeiture, the trial court must strictly comply with certain statutory requirements. [Citation.] Bail forfeiture statutes are jurisdictional and, if not strictly followed, the court loses jurisdiction to later declare a forfeiture of the bond. [Citations.] Because of the ““harsh results”” of a forfeiture, ‘technical violations’ of the bail statutes are not tolerated and will defeat the court’s jurisdiction to order a forfeiture.” (*People v. Bankers Ins. Co.* (2009) 171 Cal.App.4th 1529, 1532, quoting *People v. National Automobile & Casualty Ins. Co.* (2002) 98 Cal.App.4th 277, 287, 290.) “Additionally, the statutory requirements “are considered inviolable and do not depend on whether or not a party has suffered prejudice.”” (*People v. Bankers Ins. Co.*, *supra*, at p. 1532, quoting *People v. National Automobile & Casualty Ins. Co.*, *supra*, at p. 291, fn. 33.)

Appellate courts “apply an abuse of discretion standard in evaluating a trial court’s denial of a motion to vacate bail forfeiture.” (*People v. Bankers Ins. Co.*, *supra*, 171 Cal.App.4th at p. 1532.) “However, because trial courts exercise a limited statutory discretion in ordering bail forfeitures and the issues are jurisdictional, we are required to carefully review the record to ensure strict statutory compliance.” (*Id.* at pp. 1532-1533.)

Penal Code section 1305, subdivision (a) (section 1305(a)), requires the court to “in open court declare forfeited the undertaking of bail . . . if, without sufficient excuse, a defendant fails to appear” The failure to strictly comply with this statutory requirement results in the loss of jurisdiction over the bond and exoneration of the bond by operation of law. (*People v. Amwest Surety Ins. Co.* (2004) 125 Cal.App.4th 547, 550, 554 [trial court’s failure to declare forfeiture in

open court resulted in loss of fundamental jurisdiction and summary judgment on bond “subject to collateral attack at any time”]; *People v. Bankers Ins. Co.*, *supra*, 171 Cal.App.4th at pp. 1531, 1534-1535 [trial court’s statement on record it would “keep the bail bond and issue a warrant” after defendant’s nonappearance did not comply with section 1305(a)]; *People v. National Automobile & Casualty Ins. Co.*, *supra*, 98 Cal.App.4th at pp. 280-281, 290 [trial court’s statement that bail was “revoked” after defendant’s nonappearance did not comply with section 1305(a), notwithstanding the court’s off-the-record correction and issuance of a minute order stating bail was “forfeited”]; see *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 709 [“[T]he statute’s requirement that the judge ‘in open court declare forfeited the undertaking of bail’” is satisfied “by such a statement made orally by the judge in the courtroom, while it is open to members of the public.”].)

As the trial court lacked jurisdiction to enter judgment on the bond, we must reverse the judgment and the order denying Fairmont’s motion to vacate the forfeiture and exonerate the bond, and remand to enable the trial court to enter a new order vacating the forfeiture and exonerating the bond.

DISPOSITION

The judgment is reversed. The order denying the motion to vacate the forfeiture is reversed. The matter is remanded with directions to enter a new order vacating the forfeiture and exonerating the bond. Costs on appeal are awarded to Fairmont.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.